

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2015

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(PD).No.2618 of 2015
and M.P.No.1 of 2015

D.Thulasi

.. Petitioner/3rd Defendant

Vs.

1.D.Srinivasan

.. 1st Respondent/Plaintiff

2.D.Parthasarathy

3.D.Shanthi

.. Respondents 2 and 3/
Defendants 1 and 2

Prayer:- Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order dated 24.04.2015 passed in I.A.No.10211 of 2011 in O.S.No.5845 of 2007 by the learned II Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.J.Kamaraj

For Respondents: Mr.L.Dhamodaran

ORDER

Civil Revision Petition is filed against the fair and decreetal order dated 24.04.2015 passed in I.A.No.10211 of 2011 in

O.S.No.5845 of 2007 by the learned II Assistant Judge, City Civil Court, Chennai.

2.The first respondent herein as a plaintiff filed a suit in O.S.No.5845 of 2007 for partition and separate possession of his share in 'A' and 'B' schedule properties. Though a preliminary decree has been passed, the defendants did not come forward for partition. Hence, he has filed an application in I.A.No.5189 of 2009 for appointment of Advocate Commissioner to divide the property. After inspecting the property, the Advocate Commissioner filed his report stating that the property is not feasible for division. So the first respondent/plaintiff has filed an application in I.A.No.10211 of 2011 seeking further direction to the Advocate Commissioner to sell the property described in the plaint 'A' and 'B' schedule properties either by way of public auction or sealed tender and to distribute the sale proceeds to the plaintiff and defendants. The revision petitioner/3rd defendant has filed a counter resisting the same. The trial Court, after hearing both sides, has considered the interim report filed by the Advocate Commissioner and fixed the upset price for 'A' and 'B' schedule properties per square feet at Rs.14,597/- and Rs.10,000/- respectively and directed the Advocate

Commissioner to conduct the public auction and sell the property in the public auction and file her report by 25.06.2015. Aggrieved against the same, the revision petitioner/3rd defendant has come forward with this petition.

3.The learned counsel for the revision petitioner/third defendant would submit that she is the co-sharer and she is willing to purchase the properties. Further, the upset price was fixed by the Advocate Commissioner without getting assistance from the Surveyor/valuer and not getting any suggestions from the revision petitioner. Therefore, he prayed for allowing the revision petition.

4.Heard the learned counsel for the revision petitioner as well as learned counsel for the respondents.

5.Considering the facts and circumstances of the case, fixation of upset price should be minimum for bidders. If no one is willing to purchase the property for the price as fixed by the trial Court, the Advocate Commissioner viz., Ms.B.V.Sailakshmi has every right to reduce the upset price before conducting public auction. In my view, the revision petitioner only with mala fide intention to bid the

property for lower price, has preferred the present revision petition. In such circumstances, I do not find any reason to interfere with the findings of the trial Court. This Civil Revision Petition deserves to be dismissed and it is hereby dismissed.

6. In the result, the Civil Revision Petition is dismissed. The Advocate Commissioner is directed to conduct the public auction and sell the property for the upset price as fixed by the learned II Assistant Judge, City Civil Court, Chennai. In case, if no bidder has come forward to purchase the properties, the Advocate Commissioner is directed to seek assistance from the surveyor for fixing upset price and also obtain suggestions, if any from both the parties and fix the upset price. No costs. Consequently, connected Miscellaneous Petition is closed.

17.11.2015

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Index: Yes/No

Internet: Yes/No

To

The II Assistant Judge, City Civil Court, Chennai.

R.MALA,J.

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